

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.976 of 1993 (O&M)

Date of Decision : 4th September, 2017

State of Punjab and another

..... Appellants

Versus

Ram Sarup (since deceased) through his legal representatives

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Manoj Bajaj, Addl. A.G., Punjab.
None for the respondent.

RAJ SHEKHAR ATTRI, J.

Both the defendants-State of Punjab and Inspector General of Police (Prisons)-have come up in this appeal, feeling aggrieved by the judgment and decree dated 19.11.1992, passed by the learned First Appellate Court vide which the verdict given by the trial Court was upset and the suit filed by plaintiff Ram Sarup was decreed.

The facts necessary for disposal of the appeal are that in the year 1987 plaintiff Ram Saroop was posted as Jail Warder in sub jail, Malerkotla. On the intervening night of 30 and 31 July, 1987, he was on night duty in barrack No.3 of the sub jail from 12:00 midnight to 3:00 a.m.. At about 5:00 a.m., another warder on duty reported to the Jail Superintendent that in the intervening night, two undertrial jail inmates namely Pritam Singh and Daya Singh had escaped from jail. Therefore, intimation was sent to the Inspector General (Prisons). In pursuance thereof, he and other officials visited the jail. The Inspector General conducted the spot inquiry. Vide order (Annexure P-2) dated 31.07.1987, both the warders i.e. Ram Saroop and Budh Singh were dismissed from

India without conducting any departmental inquiry.

Subsequently both escaped persons - Prem Singh and Daya Singh were recaptured and were put to jail. Their statements were recorded. Pritam Singh has stated that both of them had escaped from jail on 30.07.1987 between 10:00 p.m. to 10:30 p.m., whereas Daya Singh has disclosed that they had escaped between 9:30 p.m. to 12:00 midnight.

Plaintiff filed instant suit for declaration to the effect that dismissal order dated 31.07.1987 (Ex.P2) issued by the Inspector General of Prisons is illegal, unconstitutional, malafide, against the principles of natural justice and also against service rules and regulations. He also sought declaration that he be deemed to in continuous service and entitled to all the service benefits. According to him, none of the jail inmates had escaped during his duty period; that no inquiry was conducted and he has been condemned unheard. Thus order of dismissal Ex.P-2 is violative of Articles 14, 16, 31, 311 of the Constitution of India, as such, the same is liable to be set aside.

The suit has been contested by the defendants, interalia, on the grounds that Civil Court has no jurisdiction and plaintiff has no cause of action to file the suit, albeit, the defendants have asserted that plaintiff was deployed on duty on the night intervening 30/31st July, 1987 from 12:00 midnight to 3:00 a.m.; that two prisoners had escaped during this period; that he failed to point out that two under trial persons were missing from the barrack under his charge and that his negligence has been fully proved. Thus, plaintiff is liable for the same. Therefore, he has been correctly dismissed from service under Article 311(2) of the Constitution of India.

From the pleadings of the parties, following issues were

framed:-

1. Whether this Court has jurisdiction to try this suit ? OPP
2. Whether the plaintiff has no cause of action ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the impugned order dated 31.07.87 is bade in law as alleged ? OPP
5. Whether the plaintiff is entitled to the declaration prayed for ? OPP
6. Relief.

On appreciation of evidence, the learned trial Court had dismissed the suit whereas the first appeal was accepted vide impugned judgment and decree dated 19.11.1992.

I have heard learned Government Pleader and have gone through the record.

Learned Government Pleader has vehemently contended that learned First Appellate Court failed to appreciate the evidence on the record; that it is fully proved that both the under-trial prisoners had escaped during the duty hours of plaintiff Ram Saroop but he failed to notice their escape, thus he was negligent and responsible for their escape, as such he has been dismissed from service.

On the other hand, learned counsel for the respondent vehemently contended that the First Appellate Court has correctly appreciated the evidence; no inquiry was conducted and plaintiff has been condemned unheard.

This Court has given its thoughtful consideration to the rival contentions and critically examined the evidence on record. In this case,

the following facts are admitted:-

- (i) Plaintiff Ram Saroop was deployed as jail wardner at the relevant time in sub jail Malerkotla.
- (ii) On the intervening night of 30/31 July, 1987, his duty was from 12:00 midnight to 3:00 a.m. .
- (iii) Two under-trial prisoners had escaped from jail on the intervening night of 30/31 July, 1987. Their escape was first time reported at 5:00 a.m. on 31.05.1987 to the jail Superintendent by another warder.
- (iv) On 31.07.1987, Inspector General of Prisons conducted the spot inquiry and dismissed the plaintiff vide order Annexure P-2 without conducting an inquiry solely on the ground that the plaintiff had put the security of country under threat.

However, no reason has been assigned under what manner, the security of country is under threat. It is not the case of the appellants that escaped prisoners were indulged in the anti-national activities. Even it is not disclosed under what offence they were confined in jail. After their escape, they were recaptured and put to jail. Thereafter their statements were recorded and one of them had disclosed that the escaping mission was kept secret and both of them had escaped at about 10:30 p.m. whereas the second escapee has stated that they were escaped between 9:30 p.m. to 12:00 mid night. Except the statement of the recaptured prisoners, there is no evidence when they had escaped.

Under the background facts, now this Court would like to discuss as to whether the defendants have properly exercised the powers

envisaged under Article 311 of the Constitution.

In the outset, it should be noted that the principles of natural justice is the pulse beat of our constitution. One of the two basic principles of administrative law is that no one should be condemned unheard or more precisely the principle of *audi alteram partem*. It finds expression in the Constitution of India, under Article 14 which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The second principle finds expression in Article 311 of the Constitution of India, which says that no person, who is a member of civil service either of the Union of India or of the State, shall be dismissed or removed or reduced in rank except after holding an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. For a ready reference, Article 311 of the Constitution of India, on which the entire subject to the present appeal revolves is referred below :

"311. Dismissal, Removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such

inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply -

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

A bare perusal of Article 311 (ibid) makes it abundantly clear that no Government servant is liable to be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. This is the basic rule. However, there are certain exceptions to this rule and these exceptions are given in second proviso of Article 311 of the Constitution. Admittedly there are three contingencies where a proper enquiry or a disciplinary proceeding can be dispensed with under the second proviso to Article 311 of the Constitution which are given below:-

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

Apparently, the case in hand, is not a case where situation is as contemplated in (a) or (c) (ibid) exists. This is clearly a case where the appointing authority has exercised its power under (b). The Inspector General of Police (Prisons) has been empowered to remove or dismiss or reduce the rank of a warder without holding an inquiry or disciplinary proceedings, in case a contingency so demands. However, the moot question which arises for consideration is as to whether these powers have been exercised by the Inspector General of Police (Prisons) with due diligence or in other words whether the situation demanded an exercise of these powers and also whether full compliance of the rules and the law has been made by such authority while passing such an order in his purported exercise of these powers ? First of all, it has to be seen that Article 311 (3) clearly states that once an appointing authority comes to a decision that it is not reasonably practicable to hold such inquiry, as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final. In other words, the superior authorities cannot even question the decision of the appointing authority. It is for this reason that second proviso to Article 311 (2), namely, proviso 2 (b) states that when such an authority is satisfied that for some reasons to be recorded by that authority in writing it is not reasonably practicable to hold such inquiry, he may do so. In other words, not only

such an authority will have to come to the conclusion that it is not reasonably practicable to hold such inquiry but he must assign such reasons in writing. The words urged under clause (b) "reasons to be recorded in writing that it is not reasonably practicable to hold enquiry" means that there must be some material for satisfaction of the disciplinary authority that it is not reasonably practicable. The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. However, in the present case, it is found that only a bald statement has been made by the Inspector General of Police (Prisons) that it is not practicable to hold an inquiry. He has not assigned the reasons why he has come to the conclusion that such an inquiry is not practicable. Merely to hold that the action of the plaintiff has depleted the image of the jail department is no reason for dismissing the petitioner from his service. Moreover, in the opinion of this Court, there is no apparent reason not to hold an inquiry and disciplinary proceedings in the present matter and under the facts and circumstances of the case, the punishment could only have been imposed against the petitioner after holding an inquiry and disciplinary proceedings, as prescribed under the law.

In the case of *Union of India and another. v. Tulsi Ram Patel*, AIR 1985 SC 1416, Hon'ble Supreme Court held that expediency or in expediency of holding of inquiry in pursuance of clause (2) of Article 311 of the Constitution falls within the domain of President or the Governor. In the present case, the Punishing authority keeping in view the security of State. Expediency involves matters of policy. Satisfaction may be arrived as a result of material received by the Government brewing danger to security of the State and like matters. Reasons of satisfaction need not be recorded

in the dismissal order. Relevant portion from Tulsi Ram Patel's case supra, is reproduced as under:

"127. ...If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the court will also strike down the impugned order... It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

Hon'ble Supreme Court further proceeded to hold as under:

"133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. it would, however, be better to record the reason in the final order in order to avoid the

allegation that the reason was not recorded in writing before passing the final order, but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances."

In case as reported in **(1991) 1 SCC 729: Chief Security Officer and others. v. Singasan Ravidas**, while relying upon the case of Tulsiram Patel (supra), their Lordships while dismissing the appeal, had reiterated the principle that dismissal of service without holding regular inquiry must be based on subjective satisfaction recorded by the appointing authority. In absence of sufficient material or good ground for dispensing with the inquiry, the order of dismissal from service was held to be not proper.

In the case of **Jasvant Singh v. State of Punjab and others (1991) 1 SCC 362**, their Lordships had allowed the appeal on the ground that the authorities failed to disclose the material in existence at the date of passing the order of punishment in support of subjective satisfaction recorded by the competent authority. The judgment of the Hon'ble Apex Court in the case of Tulsiram Patel (supra), was reiterated and the order of punishment was found to be based on unfounded ground. Their Lordship

supra in para-5 thereof, as under:

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the Government servant is weak and must fail."

Hon'ble Supreme Court in the case of Jaswant Singh supra, again in para-5 thereof, proceeded to hold as under:

"The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer."

Ordinarily, every order depriving a citizen from civil rights or from source of livelihood, in violation of principles of natural justice shall be arbitrarily and hit by Articles 14 and 21 of the Constitution. Even if there are statutory provisions of denial of principles of natural justice, the State action must be based on subjective satisfaction on the basis of material on record.

Thus, in the case in hand, no reason has been assigned under which circumstances, integrity or security of State had been put under threat by the escape of two prisoners. Apart from it, there is no cogent evidence to establish if the prisoners had escaped during the duty hours of plaintiff as their absence from jail has first time reported to the Superintendent of Jail at 5:00 a.m. In this view of the matter, the plaintiff had been condemned unheard and had been dismissed from service in an arbitrary and illegal manner. Said order (Ex.P-2) is farcical and against the

provisions of Article 311 (2) as well as against the principles of natural justice. Therefore, the same is not sustainable as the same has been rightly set aside by learned First Appellate Court.

Thus, this appeal is bereft of any merit and the same is dismissed with costs in the sum of Rs.5,000/-. Judgment and decree dated 19.11.1992 passed by the learned First Appellate Court stand upheld.

(RAJ SHEKHAR ATTRI)
JUDGE

September 4th, 2017
mamta-M

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No